

AMENDED IN SENATE AUGUST 15, 2005

AMENDED IN SENATE JUNE 28, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

## ASSEMBLY BILL

**No. 124**

**Introduced by Assembly Member Dymally**

January 13, 2005

---

An act to amend Sections 19790, 19791, 19792, 19792.5, 19793, 19794, 19795, 19796, 19797, and 19798 of, to amend the heading of Chapter 12 (commencing with Section 19790) of Part 2 of Division 5 of Title 2 of, and to add Section 19798.5 to, the Government Code, relating to state civil service.

### LEGISLATIVE COUNSEL'S DIGEST

AB 124, as amended, Dymally. Civil service: equal opportunity programs.

The State Civil Service Act requires each state agency and department to establish an effective affirmative action program with specified components, and to establish goals and timetables designed to overcome any identified underutilization of minorities and women in their respective organizations. Existing law requires the State Personnel Board to conduct specified activities in this regard.

Portions of these provisions have been held to be in violation of the California Constitution and the United States Constitution.

This bill would revise and recast these provisions to instead require each state agency to establish an equal opportunity program to ensure that the state policy of providing equal access to state jobs, work ~~assignment~~ *assignments*, training, and other employment-related opportunities for all qualified job applicants and employees, based on merit and nondiscrimination in every aspect of personnel policies and

employment practices, is fully implemented. It would require the State Personnel Board to conduct specified activities, including the collection of specific employment data based on race, ethnicity, gender, and disability in this regard.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The heading of Chapter 12 (commencing with  
2 Section 19790) of Part 2 of Division 5 of Title 2 of the  
3 Government Code is amended to read:

4  
5 CHAPTER 12. STATE CIVIL SERVICE EQUAL EMPLOYMENT  
6 OPPORTUNITY PROGRAM  
7

8 SEC. 2. Section 19790 of the Government Code is amended  
9 to read:

10 19790. Each state agency is responsible for establishing an  
11 effective equal employment opportunity program. The State  
12 Personnel Board shall be responsible for taking all steps  
13 necessary to provide statewide advocacy, coordination,  
14 enforcement, and monitoring of these programs.

15 SEC. 3. Section 19791 of the Government Code is amended  
16 to read:

17 19791. As used in this chapter, the following definitions  
18 apply:

19 (a) "Equal employment opportunity" mean ensuring  
20 nondiscrimination and providing equal access to state jobs, work  
21 assignments, training, and other employment-related  
22 opportunities for all qualified job applicants and employees.

23 (b) "Underutilization" means having a statistically significant,  
24 smaller percentage of persons of a group in an occupation or at a  
25 level in a state agency than would reasonably be expected by  
26 their percentage representation in the relevant labor force. An  
27 identified underutilization is not necessarily indicative of a denial  
28 of equal employment opportunity, but warrants an analysis of the  
29 cause of the underutilization.

30 SEC. 4. Section 19792 of the Government Code is amended  
31 to read:

1 19792. The State Personnel Board shall do all of the  
2 following:

3 (a) Provide statewide leadership, designed to achieve equal  
4 employment opportunity in the state civil service.

5 (b) Develop, implement, and maintain equal employment  
6 opportunity guidelines.

7 (c) Provide technical assistance to state agencies in the  
8 development and implementation of their equal employment  
9 opportunity programs.

10 (d) Review and evaluate departmental equal employment  
11 opportunity programs to ensure that they comply with state and  
12 federal statutes and regulations.

13 (e) Establish programs to ensure equal employment  
14 opportunity for all state job applicants and employees through  
15 broad, inclusive recruitment efforts and other measures as  
16 allowed by law.

17 (f) Provide statewide training to departmental equal  
18 employment opportunity officers who will conduct training on  
19 equal employment opportunity.

20 (g) Review, examine the validity of, and update qualifications  
21 standards, selection devices, including oral appraisal panels and  
22 career advancement programs.

23 (h) Maintain a statistical information system designed to yield  
24 the data and the analysis necessary for the evaluation of equal  
25 employment opportunity within the state civil service. The  
26 statistical information shall include specific data to determine the  
27 underutilization of groups based on race, ethnicity, ~~and gender~~  
28 *gender, and disability*. The statistical information shall be made  
29 available during normal working hours to all interested persons.  
30 Data generated on a regular basis shall include, but not be limited  
31 to, all of the following:

32 (1) Current state civil service workforce composition by race,  
33 ethnicity, gender, age, department, salary level, occupation, and  
34 attrition rates by occupation.

35 (2) Current local and regional workforce and population data  
36 for groups based on race, ethnicity, gender, and age.

37 (i) The data analysis referred to in subdivision (h) above shall  
38 include, but not be limited to, all of the following:

1 (1) Data relating to the utilization of groups based on race,  
2 ethnicity, ~~gender, and disability~~ *and gender* compared to their  
3 availability in the relevant labor force.

4 (2) Turnover data by department and occupation.

5 (3) Data relating to salary administration, including average  
6 salaries for groups based on race, ethnicity, gender, and disability  
7 and comparisons of salaries within state service and comparable  
8 state employment.

9 (4) Data on employee age, and salary level compared among  
10 groups based on race, ethnicity, gender, and disability.

11 (5) Data on the number of individuals of each race, ethnicity,  
12 gender, and disability who are recruited for, participate in, and  
13 pass state civil service examinations. This data shall be analyzed  
14 pursuant to the provisions of Sections 19704 and 19705.

15 (6) Data on the job classifications, geographic locations,  
16 separations, salaries, and other conditions of employment that  
17 provide additional information about the composition of the state  
18 civil service workforce.

19 SEC. 5. Section 19792.5 of the Government Code is amended  
20 to read:

21 19792.5. (a) In order to permit the public to track upward  
22 mobility and the impact of equal opportunities on persons,  
23 categorized by race, ethnicity, gender, and disability in state civil  
24 service, the State Personnel Board shall annually track, by  
25 incremental levels of ten thousand dollars (\$10,000), the salaries  
26 of persons, categorized by race, ethnicity, gender, and disability  
27 in state civil service. For purposes of this subdivision, “upward  
28 mobility” means the advancement of persons, categorized by  
29 race, ethnicity, ~~and gender~~ *gender, and disability* to better paying  
30 and higher level positions.

31 (b) The board shall report salary data collected pursuant to  
32 subdivision (a) to the Governor and the Legislature in its Annual  
33 Census of State Employees and Equal Employment Opportunity  
34 Report, as required in Section 19793, and shall include in this  
35 report information regarding the progress of individuals by race,  
36 ethnicity, and gender in attaining high-level positions in state  
37 employment. The salary data shall be reported in annual  
38 increments of ten thousand dollars (\$10,000) by job category,  
39 race, ethnicity, ~~and gender~~ *gender, and disability* in a format  
40 easily understandable by the public.

SEC. 6. Section 19793 of the Government Code is amended to read:

19793. By November 15 of each year, the State Personnel Board shall submit to the Governor, the Legislature, and the Department of Finance a census report that shall include demographic information on employees in the state civil service, based upon the analysis of the data collected pursuant to Section 19792. The report shall specifically include, ~~but be not~~ *not be* limited to, identified underutilizations and, where warranted by analysis of the underutilizations, steps taken to ensure equal employment opportunity in the state civil service. The report shall also include information to the Legislature on laws that discriminate or have the effect of discriminating on the basis of race, ethnicity, ~~and gender~~ *gender, and disability*. The Legislature shall evaluate the equal employment opportunity efforts of state agencies during its evaluation of the Budget Bill.

SEC. 7. Section 19794 of the Government Code is amended to read:

19794. In cooperation with the State Personnel Board, the appointing power of each state agency shall have the major responsibility for monitoring the effectiveness of the equal employment opportunity programs of the state agency. To that end, the appointing power shall do all of the following:

(a) Issue a policy statement committing to equal employment opportunity.

(b) Issue procedures for filing, processing, and resolving discrimination complaints within the state agency, consistent with state laws and rules, and for filing appeals from agency decisions on these complaints.

(c) Issue procedures for providing equal upward mobility and promotional opportunities to state employees.

(d) Cooperate with the board by providing access, in accordance with subdivisions (o) and (p) of Section 1798.24 of the Civil Code, to all files, documents, and data necessary for the board to carry out its mandates under this chapter.

SEC. 8. Section 19795 of the Government Code is amended to read:

19795. (a) The appointing power of each state agency and the director of each state department shall ~~appoint~~, *appoint*, at the managerial level, an equal employment opportunity officer,

~~other than the personnel officer. However, in who shall report directly to, and be under the supervision of, the director of the department, to develop, implement, coordinate, and monitor the agency's equal employment opportunity program. In a state agency with less than 500 employees, the equal employment opportunity officer may be the personnel officer who shall report directly, and be under the supervision of, the director of the department, to develop, implement, coordinate, and monitor the agency's equal employment opportunity program.~~ The agency equal employment opportunity officer shall, among other duties, analyze and report on appointments of employees, bring issues of concern regarding equal employment opportunity to the appointing power and recommend appropriate action, submit an evaluation of the effectiveness of the total equal employment opportunity program to the State Personnel Board annually, monitor the composition of oral panels in departmental examinations, and perform other duties necessary for the effective implementation of the agency equal employment opportunity plans.

(b) (1) Each state agency shall establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities, and matters relating to the formulation and implementation of the plan to overcome and correct any underrepresentation determined pursuant to Section 19234.

(2) Departments shall invite all employees to serve on the committee and shall take appropriate steps to ~~insure~~ ensure the final committee is comprised of members who have disabilities or who have an interest in disability issues. Each department shall ~~insure~~ ensure that at least two-thirds of the members of the committee are individuals with disabilities or retain documentation that demonstrates that the number of employees invited to participate, and willing and able to serve, was insufficient to meet this requirement.

SEC. 9. Section 19796 of the Government Code is amended to read:

19796. Bureau or division chiefs within a state agency shall be accountable to the appointing power for the effectiveness and

1 results of the equal employment opportunity program within their  
2 division or bureau.

3 All managers and supervisors shall provide program support  
4 and take any positive action necessary to ensure and advance  
5 equal employment opportunity at their respective levels.

6 SEC. 10. Section 19797 of the Government Code is amended  
7 to read:

8 19797. Each state agency shall develop, update annually, and  
9 implement an equal employment opportunity plan which shall, at  
10 a minimum, identify the areas of significant underutilization of  
11 specific groups based on race, ethnicity, and gender, within each  
12 department by job category and level, contain an equal  
13 employment opportunity analysis of all job categories and levels  
14 within the hiring jurisdiction, and include an explanation and  
15 specific actions for removing any non-job-related employment  
16 barriers.

17 SEC. 11. Section 19798 of the Government Code is amended  
18 to read:

19 19798. In establishing order and subdivisions of layoff and  
20 reemployment, the board, when it finds past discriminatory  
21 hiring practices, may authorize modification of the order of  
22 layoff, in accordance with board rule, only if failure to do so by a  
23 department would result in ineligibility for a federal program  
24 with a loss of federal funds or if required by federal law or the  
25 United States Constitution.

26 SEC. 12. Section 19798.5 is added to the Government Code,  
27 to read:

28 19798.5. State departments, agencies, and the State Personnel  
29 Board shall continue to carry out their respective duties required  
30 by Sections 19230 to 19237, inclusive, with respect to  
31 establishing, monitoring, and reporting on an affirmative action  
32 plan, including goals and timetables, for ensuring individuals  
33 with disabilities access to state employment. These activities  
34 shall be coordinated with and integrated into the planning,  
35 reporting, and monitoring activities required by this chapter.